where, and also the amount transacted in Illinois, and the total value of its property wherever located, and the value of that part of it located in Illinois. If the percentage derived by dividing the business and property in Illinois by the total business and property of the corporation is larger than the percentage on which the original initial or entrance fee was paid, then an additional initial or entrance fee is paid covering the excess as shown by the annual report over the amount estimated at the time of entrance. This process is repeated each year, so that the foreign corporation has at all times paid, after the first year, for the privilege of doing business in Illinois an initial fee upon the maximum amount of its issued capital stock represented by business and property which it has at any time in its history had in Illinois (Section 101). It receives no refund of this payment in years in which its business and property diminishes over a preceding more prosperous year.

In addition to the admission tax of the foreign corporation, a franchise tax is exacted of it, covering the remainder of the first year of its admission (Sec. 129), based on the proportion of its issued capital stock represented in Illinois, as determined by the estimate stated in the application, pursuant to section 81.

Having admitted foreign corporation, as a quasi citizen, into the state, the State of Illinois requires both foreign and domestic to file an annual report; section 102 providing that:

"Each corporation, including railroads, domestic and foreign, * * * shall make a report in writing to the Secretary of State between the first day of February and the first day of March of each year on the forms to be prescribed and furnished by the Secretary of State. That part of the annual report relating to property and business shall be made as for the calendar year ending December 31st preceding. * * * Such annual report shall also disclose such facts as are necessary to enable the Secretary of State to ascertain the proportion of its capital stock represented by business transacted and tangible property located in this state and such other information as may be necessary or appropriate in order to assess the annual license fee or franchise tax." * * *

On the basis of the annual reports filed by foreign and domestic corporations the Secretary of State of Illinois is required to determine the proportion of the capital stock represented by "business transacted and property located" in the state.

Section 106 provides that:

"In ascertaining the amount of the issued capital stock represented by business transacted and property located in this state, the sum of the business of any foreign or domestic corporation transacted in this state and the total property of such corporation located within this state shall be divided by the sum of the total business of the corporation and the total property of the corporation wherever situated."

Having determined the amount of capital stock of each foreign and domestic corporation—so represented in Illinois, the Secretary of State computes their annual franchise taxes as is provided by paragraphs 105 and 107 of the statute and as set forth in appellant's brief. This annual payment is required without consideration of payments made in former years, and even though the corporation had paid a large sum of money in previous years under the former act which was declared unconstitutional (O'Gara Coal Co. v. Emmerson, 326 Ill. 18), it cannot set off the former payment illegally exacted against the amount presently due, nor in any other way recover taxes illegally collected by the State of Illinois as franchise taxes or initial fee (Montgomery Ward v. Stratton, 342 Ill. 472). No complaint is raised in this proceeding against the assessment of the initial fee or additional initial fees, or the annual franchise tax if fixed by section 105 at $135.21. The complaint of the taxpayer in this case is that Section 107 of the General Corporation Act, taken in conjunction with the last paragraph of section 105, provides in effect, that if section 105 does not produce the tax equal to the schedule set forth in section 107, then the schedule in section 107 shall apply.

In the instant case the tax under section 105 would be only $135.21 for the year in question, whereas the tax under section 107 provides a minimum of $1,000.00. As heretofore pointed out the initial or entrance fee is levied for the privilege of doing business in a state, and a fran-

chise tax under section 105, is levied annually on the exercise of that privilege, and is based and computed upon the amount of the exercise of the privilege. Section 107 disregards any such measurement, but provides arbitrary minimum sums which must be paid and which are based merely on the size or amount of the issued capital stock of the foreign corporation.

Section 92 provides that the Secretary of State may revoke the authority of a foreign corporation to do business in the state,

> "(2) if such corporation is transacting no business in Illinois and has no tangible property in this state";

or on the failure of such a corporation to pay the annual franchise tax. The statute provided for divers penalties, against the corporation and its officers, in the event it failed to comply with the statute (Sec. 114).

The State of Illinois levied a general property tax against all of appellee's property, both real and personal, which is located within its territorial limits, by valuation, at a uniform rate. The State of Illinois taxes, as personal property, the shares of appellee's stock owned by a resident of Illinois.

The franchise tax here involved is not in lieu of any of these taxes, but is in addition thereto.

CONTENTIONS OF APPELLEE.

Appellee contends, that, as applied to it, under the facts pleaded, paragraphs 105 and/or 107 of the Illinois Corporation Act are void, in that they take from appellee rights guaranteed to it by the Constitution of the United States:

1. Unreasonably burdening and directly taxing appellee's commerce between the states in violation of the commerce clause of the Constitution of the United States.

2. Taxing appellee's property and business outside the State of Illinois, and thereby depriving appellee of its property without due process, contrary to the Fourteenth Amendment to the Constitution of the United States.

3. Discriminating against appellee in favor of other foreign and domestic corporations, thereby denying it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

SUMMARY OF ARGUMENT.

I. The minimum fee fixed by Section 107 of the General Corporation Act of Illinois is not a fee for the privilege of doing business in the state, but is an annual franchise tax—an excise—on that privilege or its exercise.

General Corporation Act, Chap. 32, Secs. 101, 105 and 107.

II. As to appellee, Sections 105 and/or 107 of the General Corporation Act of Illinois, are void, being a direct, as well as an unreasonable burden upon the interstate commerce engaged in by appellee, and also falling upon appellee's property outside of Illinois, and thereby burdening interstate commerce and depriving appellee of its property without due process of law, respectively, contrary to the commerce clause and to the Fourteenth Amendment of the Constitution of the United States.

Western Union Tel. Co. v. Kansas, 216 U. S. 1;
Ludwig v. Western Union Tel. Co., 216 U. S. 146;
Looney v. Crane Co., 245 U. S. 178;
International Paper Co. v. Mass., 246 U. S. 135;
Air-Way Electric Co. v. Day, 266 U. S. 71;
Cudahy Packing Co. v. Hinkle, 278 U. S. 460.

After admitting a foreign corporation, a state cannot impose an annual excise, measured by its capital stock,

where the sole business, conducted by the corporation within the state, is in interstate commerce.

Alpha Portland Cement Co. v. Mass., 268 U. S. 212, 218;
Ozark Pipe Line Corp. v. Monier, 266 U. S. 561, 565.

The annual franchise tax, involved in this appeal, is not the same thing as an incorporation fee exacted of a domestic corporation or its complement, an admission or "initial" fee exacted by the state from foreign corporations seeking admittance (there being but one collection of the tax), as to which different rules apply.

Hanover Ins. Co. v. Harding (Carr), 272 U. S. 494;
Roberts & Schaefer Co. v. Emmerson, 271 U. S. 50;
People of State of New York v. Latrobe, 279 U. S. 421.

The following authorities cited by appellant are distinguishable on the foregoing grounds:

General Ry. Signal Co. v. Va., 246 U. S. 500;
Latrobe v. N. Y., 279 U. S. 421.

A state may exact an excise of domestic corporations, measured by the whole amount of the corporation's stock —since the taxing state has granted the original corporate franchise, including the right to have such amount of stock. Appellee's power to have $36,294,750.00 of issued

stock was received from the State of Missouri and not from the State of Illinois. For this reason, a state may consistently with the Federal Constitution, exact an annual franchise of domestic corporations, measured by the whole of the corporation's capital stock, while it cannot exact such a tax, so measured, of foreign corporations.

Air-Way Electric Co. v. Day, 266 U. S. 71;
O'Gara Coal Co. v. Emmerson, 326 Ill. 18.

Cases relied on by appellant and distinguishable on such grounds:

K. C., Ft. Scott & M. R. R. v. Kansas ex rel. Botkin, 240 U. S. 227;
K. C. M. & B. R. R. v. Stiles, 242 U. S. 111;
Roberts & Schaefer Co. v. Emmerson, 271 U. S. 50.

III. As applied to appellee, Paragraphs 105 to 107 of the Illinois Corporation Act deny it the equal protection of the laws, discriminating against it and in favor of other domestic and foreign corporations having like business and assets in Illinois, but a smaller amount of issued capital stock.

A state, in levying excises on corporations, cannot consistently, with the equal-protection-of-the-laws clause, discriminate in any way:

(a) Between foreign corporations of the same class which it has admitted into the state.

Air-Way Electric Appliance Co. v. Day, 266 U. S. 71;

Hanover Ins. Co. v. Carr, supra, 272 U. S. 494, Op. 510;
O'Gara Coal Co. v. Emmerson, 326 Ill. 18, at 32.

(b) Discriminate in any way against such foreign and in favor of domestic corporations.

Southern Ry. Co. v. Greene, 216 U. S. 400, 418.

(c) Nor discriminate between domestic corporations.

Royster Guano Co. v. Virginia, 253 U. S. 412.

As applied to appellee, the statute violates the equal protection clause, because the tax is not limited to that part of appellee's capital stock justly apportionable to the State of Illinois and because the method of fixing such tax bears no reasonable relation to the value of the privilege granted.

Air-Way Electric Appliance Co. v. Day, 266 U. S. 71.

Although having power to exclude foreign corporations, a state cannot limit entry on condition that such corporations waive any of their constitutional rights.

Looney v. Crane, 245 U. S. 178, Op. 187-8;
Western Union v. Kansas, 216 U. S. 1, Op. 47-8;
Pullman Co. v. Kansas, 216 U. S. 56, Op. 63-4;
Hanover Fire Ins. Co. v. Carr, 272 U. S. 494, Op. 507;
Frost v. R. R. Comm., 271 U. S. 591, at 593-4, 599.

Appellee's authority to issue stock or the number of shares it may have issued and outstanding does not depend upon the laws of Illinois. Its sole authority in that respect depends upon the laws of Missouri under which it was created.

Air-Way Electric Appliance Co. v. Day, 266 U. S. 71;
Roberts & Schaefer Co. v. Emmerson, 271 U. S. 50;
O'Gara Coal Co. v. Emmerson, 326 Ill. 18, at 32.

The Illinois statutes prohibit appellee from acquiring other railroad properties without first securing a certificate of convenience and necessity from the Illinois Commerce Commission.

Smith-Hurd Statutes 1927, Chap. 111⅔, Par. 56;
Cahill's Ill. Rev. Statutes 1927, Chap. 111a, Par. 71.

Under which statute, as construed by the Illinois courts, no certificate of convenience and necessity can be granted to an applicant as long as any other utility in the field is rendering adequate service.

Egyptian Transportation System v. Louisville & Nashville R. R., 321 Ill. 580;
Illinois Power & Light Corp. v. Illinois Commerce Commission, 320 Ill. 427.

privilege annually sold by the State of Illinois to appellee, of being a corporation and exercising corporate franchises in Illinois for the year covered by the franchise tax. In other words, appellant endeavors to treat this tax as if it were the incorporation "initial" fee required of a domestic corporation or the "admission fee" of a foreign corporation. In fact, the tax here involved is a "franchise tax"—an excise—a tax upon a privilege of being admitted to do business in Illinois as a corporation for eighty-eight (88) years from October 19, 1903; which privilege was sold (granted) to appellee in 1903.

For such reason and in order that the true nature of this tax may be made the more apparent, we deem a more detailed explanation of the operation pertinent provisions of the Corporation Act (which are set out in full in the appendix hereto) to be necessary.

The State of Illinois exacts, and, at the time this controversy arose, exacted, from domestic corporations (Sec. 96) an "initial" (incorporation) fee, but once paid on its stock as issued (no fee being paid on authorized but unissued stock), and also an annual franchise tax for the remainder of the first year (Sec. 129) and yearly thereafter (Secs. 105-107).

Section 80 provides that every foreign corporation shall, "before it transacts any business or maintains an office in this state, procure a certificate of authority therefor from the Secretary of State."

Section 81 provides the form of such application in the manner of a questionnaire covering information, from which the Secretary of State may compute the proportion of its capital stock which will be represented in Illinois during the remainder of the first calendar year of its admission by the corporation's estimate of its business to be done within and property to be brought into the state during that period, and by a like estimate of its business and property in all states during the same period.

Section 101 provides for an admission fee (the complement of the "initial" or incorporation fee charged domestic corporations by section 96), requiring a foreign corporation to pay for a "certificate of authority to do business in Illinois, the same fees provided by this to be paid by a similar corporation incorporated under the laws of this state. * * * All such fees shall be based upon the proportion of its issued capital stock represented by business transacted and property located in Illinois." The first payment on the initial or entrance fee is made before the corporation has done any business in Illinois, and it therefore makes an estimate of the amount of business and property it will have in Illinois and the amount of business and property everywhere, and from the proportion of these is determined the proportion of capital stock on which it will pay the original initial or entrance fee. In February of each year thereafter the foreign corporation makes a report showing the actual amount of business in dollars and cents which it transacted every-

ARGUMENT.

NATURE OF THE TAX.

I. The minimum tax fixed by the Illinois statute is not a fee required to be paid by appellant to the State of Illinois in exchange for the privilege of admission into the state and doing business therein, but is an annual excise tax laid on such privilege.

In the statement we directed attention to the fact that appellant's brief treats the tax here involved as a consideration required to be paid by appellee for the privilege of doing business in the State of Illinois. In truth and in substance nothing could be further from the fact. In 1903 appellee purchased from the State of Illinois the privilege of doing business in the state for a period of eighty-eight years, which will expire in the year 1991. It may be said that the purchase at that time was limited to the bringing within the state of up to $50,000.00 of its authorized capital. If so, then since that date it has purchased from the State of Illinois the right or privilege of bringing into the state up to $5,500,000.00 of its authorized capital or (if the issued capital be apportioned) $1,533,324.43 of its issued capital.

Inasmuch as the State has sold the privilege of doing a corporate business in Illinois to appellee, for a consideration, it cannot now exact additional compensation for that privilege.

The State may, however, tax the extraordinary privilege and franchise which it has given. The tax here involved is an excise. It is a tax on the exercise of the extraordinary privilege heretofore granted appellee, of being admitted into Illinois. Initial fees required of domestic corporations and the admission fees required of foreign corporations, constitute the price paid to the State of Illinois by such corporations in exchange for their corporate existence and powers. The excises required by Sections 105 and 107 of the General Corporation Act of Illinois are purely revenue-producing measures—a franchise tax upon the exercise by appellee and other corporations of a franchise and contract right previously granted. That the annual minimum franchise tax herein claimed to be unconstitutional is not attempted to be levied for the privilege or authority to do business in Illinois is made quite obvious by the language of section 101, which fixes the fee for that privilege. Said section, in part, reads as follows:

> "Each foreign corporation for pecuniary profits, * * * in addition to the annual franchise fees of taxes hereinafter provided, shall pay to the Secretary of State for its certificate of authority to do business in Illinois, the same fees provided by this act to be paid by similar corporations incorporated under the laws of this State."

The privilege so granted, when once paid for, continues until the corporation voluntarily withdraws from the

State as provided in the act, or is required to withdraw by action of the Attorney-General in a proper proceeding in court. Section 126 of the act requires the Secretary of State on or before the 15th of November of each year, to send to the Attorney-General a list of corporations delinquent in filing an annual report or in paying annual franchise taxes. The Attorney-General is commanded by said section to institute proceedings against such corporations thereafter, for the revocation of their charter or license, and provides for the stay of such proceedings if the corporation presents a report and pays the fees, taxes and penalties due.

On admission the state may charge what it pleases for the granting of the right, the franchise to be a corporation in the state, so long as it does not attempt to require the waiver of any constitutional rights or discriminate between applicants.

But, once admitted, the state has no such broad power as regards the levying of excise taxes on the privileges granted by it.

> "In subjecting a law of the state which imposes a charge upon foreign corporations to the test whether such a charge violates the equal-protection clause of the Fourteenth Amendment, a line has to be drawn between the burden imposed by the state for the license or privilege to do business in the state and the tax burden which, having secured the right to do business, the foreign corporation must share with all the corporations and other taxpayers of the state.

> With respect to the admission fee, so to speak, which the foreign corporation must pay to become a quasi citizen of the state and entitled to equal privileges with citizens of the state, the measure of the burden is in the discretion of the state and any inequality, as between the foreign corporation and the domestic corporation in that regard, does not come within the inhibition of the Fourteenth Amendment, but, after its admission, the foreign corporation stands equal and is to be classified with domestic corporations of the same kind."
>
> Hanover v. Harding (Carr), 272 U. S. 494, Op. 510-511.

The franchise tax involved in this appeal is therefore a much different thing than the incorporation fee exacted of a domestic corporation or its complement, an admission or "initial" fee exacted by the state of foreign corporations seeking admittance (there being but one collection of the tax), as to which different rules apply, as in

> New York v. Latrobe, 279 U. S. 421;
> Roberts & Schaefer Co. v. Emmerson, 271 U. S. 50.

THE QUESTIONS INVOLVED IN THIS CASE.

We say, therefore, the question is not (as stated by appellant, Brief, p. 12) whether

> "the State may require a corporation organized or admitted to do business in the state, to pay a minimum fee or franchise tax, as provided in sections 105

and 107, for granting it the privilege of doing business in the state during the next year, although it may not have actually exercised its franchise in the state the preceding year to a sufficient extent to produce such an amount of tax at the rate specified in section 105."

Actually, the questions involved in this case are:

1. May the gross amount of the issued capital stock of a foreign corporation, consistently with the commerce and due-process clauses of the Constitution, be made the measure of an annual excise exacted by the state, of a foreign corporation, before that time admitted into the state, irrespective of the amount of the capital stock of such corporation actually represented in the state—particularly where only a portion of the corporation's stock has been admitted into the state?

2. May a state, consistently with the equal-protection clause of the Constitution, exact an annual excise from a foreign corporation which it had previously admitted, basing said tax as to one corporation on its total issued stock, irrespective of the amount of said stock represented in the state, and as to other corporations, both foreign and domestic, based on the proportion of their stock represented by property and business in the state, and resulting in the one corporation paying a larger tax on each dollar of its capital stock represented in the state than is paid on each dollar of the capital stock (represented in the state) of such other corporations?

3. Does a state statute exacting an annual excise of foreign corporations, measured and graduated according to the gross amount of the issued capital stock of such corporation and without regard to the amount thereof represented in the taxing state, consistently with the equal-protection clause, require like fees for equal privilege held by all foreign corporations under the same circumstances?

II.

The tax here involved is, as to appellee, void, inasmuch as it burdens interstate commerce and deprives appellant of property without due process of law.

On this point we wish to assert our faith in the correctness of the determination of this cause by the Statutory Court. We respectfully insist, as we did before that Court, that the case of Cudahy Packing Company v. Hinkle, Secretary of State, et al., 278 U. S. 460, is directly in point and controls.

The theory and fundamental basis of the Illinois Franchise Tax Statutes is to require each corporation to pay an annual franchise tax of 5 cents per $100.00 on that part of its issued capital stock represented by property owned and business done in Illinois.

The scale of minimums set forth in section 107, on its face, applies only to corporations without either capital, assets or business in Illinois. It is made applicable to appellee by reason of the proviso of section 105. The

actual effect of the statute, as appellee seeks to apply it in this case, is that, having determined the franchise tax which appellee should pay upon that portion of its capital stock represented by property and business in Illinois ($135.21), and having found that the tax as so determined was small in amount, the State of Illinois arbitrarily fixes an annual tax in a larger amount ($1,000.00). If $135.21 represents the tax on that portion of appellee's capital represented by property and business in Illinois, then when the State of Illinois arbitrarily demands an additional $864.79, such additional tax, if paid, necessarily falls on that part of appellee's capital stock which is represented by property and business without the State of Illinois.

The effect of the commerce clause was first considered with reference to a franchise tax in the case of Western Union Tel. Co. v. Kansas, 216 U. S. 1, 30 Sup. Ct. 190. This Court specifically held void, as being in violation of the commerce clause, a Kansas statute requiring foreign corporations (before that time admitted to intrastate business) to pay as a franchise tax a fixed (one-tenth of one percent) percent of their authorized capitals. The Court reasoned that as the whole of the capital stock represented the whole of the corporation's property and business; and, as only a part of the corporation's capital, property and business was in Kansas, the tax on all of its capital stock was, of necessity, a tax on all of its property and all of its business, which included its interstate busi-

ness and property in other states. By reason whereof the tax was in part a direct burden, a direct tax, on the corporation's business in interstate commerce, and therefore void. It is only where the burden is indirect or incidental that the commerce clause would not be violated unless the burden be unreasonable.

Here, as in the Western Union Co. case, the tax is a direct burden on the interstate commerce conducted by appellee, because one hundred thirty-five and 21/100 ($135.21) dollars is the tax which would be due from appellee on the proportion of its capital stock represented by property owned and business done in Illinois. The balance of its capital stock is represented by property and business in other states. The appellant demands eight hundred sixty-four and 79/100 ($864.79) dollars additional. If paid, then, of necessity, it is a tax and a direct burden upon all of appellee's property and business, including appellee's property in other states, its interstate commerce, and it is void.

The principle of the case of Western Union Co. v. Kansas, 216 U. S. 1, was followed in the cases of Pullman Co. v. Kansas, 216 U. S. 56; Ludwig v. Western Union Tel. Co., 216 U. S. 146; A. T. & S. F. Ry. v. O'Connor, 223 U. S. 280. Then came the decisions upon which appellant most strongly relies.

In Baltic Ming. Co. v. Mass., 231 U. S. 68, the Court sustained a statute levying an annual excise of one-fiftieth of 1 per cent on the authorized stock of foreign corporations

doing business in Massachusetts; said tax, however, being limited to a maximum of $2,000.00.

In Cheney Bros. v. Mass., 246 U. S. 147, the Court again sustained the same statute in a case which arose under practically the same circumstances, the decision being expressly on the authority of the Baltic Ming. Co. case.

In the cases of K. C. Ft. Scott & M. R. R. v. Botkin (Kansas), 240 U. S. 227; K. C. M. & B. R. R. v. Stiles, 242 U. S. 111, this Court sustained a statute levying an annual excise measured by the entire stock of domestic corporations, as to which, as heretofore pointed out, a different rule exists.

A state which creates a domestic corporation, giving it the power to be a corporation and to have a capital stock of a certain amount, may properly levy an excise measured by the entire amount of the stock of a domestic corporation. As to foreign corporations admitted in such a state, the rule is different, and the cases relied on are clearly distinguished.

This point was emphasized in the case of Roberts-Schaefer Company v. Emmerson, 271 U. S. 50, in which the Court, after discussing the Air-Way Electric Appliance Company case, said:

> "We cannnot say that a state may not impose a franchise tax on a domestic corporation, measured by its authorized capital stock" (citing the Botkin and the Stiles cases) (Op. 54).

In the case of K. C. Ft. Scott & M. R. R. v. Botkin (Kansas), 240 U. S. 227, at 230, the difference was indicated, the Court saying:

> "Examining the statute in the present case, we see no reason to doubt the accuracy of the description of the tax by the state court. We take it to be simply a tax on the privilege of being a corporation—on the primary corporate franchise granted by the state. The authority of the state to tax this privilege or franchise has always been recognized, and it is well settled that a tax of this sort is not necessarily rendered invalid because it is measured by capital stock which, in part, may represent property not subject to the state's taxing power" (Op. 232).

The question was next considered in the case of Looney v. Crane Co., 245 U. S. 178. A statute of the State of Texas required foreign corporations to pay permit and franchise taxes, graduated according to their authorized capital stock. This statute was held to violate the commerce and the due-process clauses of the Constitution of the United States. The cases of Baltic Min. Co., Botkin and Stiles, just referred to, were urged as authority on which the Texas statute should be sustained. In referring to the Western Union cases, the Court said that their "dominancy" (Op. 188) was plainly shown. Referring to the decisions there and here relied upon by the taxing states, the Court said:

"It follows, therefore, that the cases which the argument relies upon do not in any manner qualify the general principles expounded in the previous cases upon which we have rested our conclusion, since the later cases rested upon particular provisions in each particular case, which, it was held, caused the general and recognized rule not to be applicable" (Op. 190).

After the decision of the Baltic Min. Co. case, the Massachusetts Legislature removed the maximum limit of franchise taxes. Otherwise the statute remained the same, and in International Paper Co. v. Mass., 245 U. S. 135, this statute, with the maximum limit removed, was held to violate the commerce and the due-process clauses.

The cases of Ozark Pipe Line v. Monier, 266 U. S. 515, Alpha Portland Cement Co. v. Mass., 268 U. S. 203, involved annual franchise taxes sought to be imposed on foreign corporations which had been admitted into the taxing state, had property therein, but did only an interstate business. It was held that any franchise tax imposed on such corporations, necessarily fell upon all capital stock of such corporations and burdened the interstate commerce in which they were engaged. It was urged that the Baltic case was authority for the proposition that a tax which fell on interstate commerce would not be held invalid unless it was of a substantial amount. In regard to this, the Court said:

"The amount demanded is unimportant when there is no legitimate basis for the tax. So far as the lan-

guage of Baltic Min. Co. v. Massachusetts, 231 U. S. 68, 87, 58 L. ed. 127, 134, 34 Sup. Ct. Rep. 15, tends to support a different view, it conflicts with conclusion reached in later opinions, and is now definitely disapproved."

Alpha Portland Cement Co. v. Mass., 268 U. S. 203, op. 218.

In these cases, the corporations retained and maintained their rights to do business (just as appellee did in Illinois) in the state—which granted the privilege of doing a local business. If a franchise tax cannot be imposed where the foreign corporation, after admittance, does no local business, it necessarily follows, that if such a corporation does a small amount of local business, a franchise tax, out of proportion to such business, and not in a fair manner, measured by it, cannot be exacted, without burdening commerce and property beyond the state.

The case of Air-Way Electric Appliance Co. v. Day, 266 U. S. 71, involved franchise tax based on the portion of the authorized stock of a foreign corporation (only a part of which was issued), represented by property owned and business done in the taxing state. It was held that the tax in so far as it was based on the authorized but unissued stock, of necessity, fell on issued stock which represented commerce between the states carried on by the corporation.

"As some of the outstanding shares are represented by plaintiff's interstate business the application of the

rate to all the shares, or to a number greater than the total outstanding, necessarily amounts to a tax and direct burden upon all the property and business, including the interstate commerce, of the plaintiff (International Paper Co. v. Massachusetts, supra, 142). We hold that the act violates the commerce clause."

Air-Way Electric Appliance Corp. v. Day, Op. 226 U. S. 71.

The actual effect of Sections 105-107 of the Illinois statute is the same as the actual effect of the Ohio statute. The body of section 105 fixes a tax on the basis of property owned and business done in Illinois. The proviso of section 105 singles out a class of corporations (including appellee) and after making allowance for the franchise tax as capital measured by the property and business in Illinois, it places an additional burden and tax on them—the scale of minimums provided by section 107. This additional burden and tax must, in part, fall on and directly burden appellee's commerce between the states.

If the State of Illinois had levied a tax based on the authorized stock of appellee (a part of which is unissued), it would be void. If the tax was based on any part (but not all) of the authorized but unissued stock, we do not believe the Court would have any hesitancy in declaring it to be void. Here, the tax is based, first, upon appellee's issued stock represented in Illinois, and then an additional amount is arbitrarily added thereto. There is no difference, in substance, between the decided cases and this.

The Court last considered this question in the case of Cudahy Packing Co. v. Hinkle, 278 U. S. 460. A statute of the State of Washington, requiring local and foreign corporations to pay an annual tax, graduated and scaled according to their authorized capital stocks, was held void as being in violation of the commerce and due-process clauses.

Appellant distinguishes the Cudahy case on the grounds that the tax was measured by authorized, rather than issued, stock. This particular difference would seem to be pertinent only in connection with questions involving the equal-protection clause, which, in that case, the Court found unnecessary to consider. In deciding the questions involving the commerce and due-process clauses, if the Court had in mind that the basing of the tax on authorized, rather than issued, stock was of any consequence, no mention was made of such fact.

It might be observed that the Illinois act has no maximum limit, and the minimum of taxes charged against appellee for the year in question is $1,000. The paid-in capital stock of the Cudahy Company was $29,800,000—the paid-in capital stock of appellee company is $36,249,750. Under the Illinois statute, if applied to the Cudahy Company, under the facts of that case, it would have been required to pay $1,000 minimum franchise tax the same as appellee company. Under the Washington statute it was required to pay only $580. The value of the Cudahy Company's property in the State of Washington was

$40,000—the value of the appellee corporation's property in Illinois is $801,196. The Cudahy Company could not remove its property from Washington without interfering with the conduct of its interstate business, and neither can the appellee remove its property from Illinois without like interference. Both must submit to a confiscation of that property by the abandonment of their right to do business as interstate agencies in the respective states. The amount of the confiscation in the Cudahy case is about one-twentieth of the amount in the appellee corporation case. The gross receipts of the Cudahy Corporation in the State of Washington for the year in question was $1,313,275. The gross receipt in the appellee corporation case in the State of Illinois for the year in question is $2,868.36, or less than one six-hundredth of the amount of the gross receipts of the Cudahy Corporation. If the payment by the Cudahy Corporation of $580 as a franchise tax out of the gross receipts of $1,313,275 and the abandonment of $40,000 worth of property used in interstate commerce imposed a burden upon its interstate commerce, or a tax upon its property in other states, then a fortiori the payment by the appellee corporation of $1,000 out of the gross receipts of $2,868.36 and the abandonment by it of $801,196 used by it in the conduct of its interstate business constitutes a burden upon its interstate commerce and must constitute a tax on its property in other states.

If we consider and compare the purposes of the Cudahy

Corporation and that of the appellee corporation, it is obvious that the case at bar is a much stronger case from that point of view also. The Cudahy Corporation was engaged in selling and marketing meat products. The appellee corporation is a railroad engaged in carrying traffic, principally between the states. Appellee corporation must accept freight offered it because it is a public carrier; the Cudahy Corporation could buy and sell to whom it chose.

A railroad corporation's interstate commerce is much more interwoven with its intrastate commerce than is that of a mercantile company. Cudahy Corporation did six one-thousandths of its total business in Washington. The appellee corporation does about eight one-thousandths of its business in Illinois.

We respectfully submit that the decision in the Cudahy case is controlling in the current case; that the scale of minimums of Section 107 of the Illinois Act is entirely similar in its form and effect to that of the Washington act and is much more onerous from a monetary point of view.

In this comparison we have entirely disregarded the other factor in the Cudahy case, namely, the initial or entrance fee. The appellee corporation has already paid this fee in Illinois and no question is here raised concerning it. The Cudahy Company was relieved from the obligation of paying that fee because the statute imposing it was drawn upon the same lines and upon the same basis

as the annual fee required. The State of Illinois, by the scale of minimums of Sec. 107 has disregarded all the restrictions imposed upon it by the Federal Constitution and such scale is void for the same reasons as the statute involved in the Western Union v. Kansas, the Looney v. Crane, the International Paper Company, Air-Way Co. v. Day and Cudahy Packing Co. v. Hinkle cases was unconstitutional and void.

It is argued (presumably because appellee has a large issued capital stock) that it may be assumed that appellee will bring more of its capital into the state than had been there represented during the previous year. Past experience does not warrant such an assumption. Furthermore, appellee, being a public utility, cannot, under the Transportation Act or the Illinois Commerce Act, extend its lines in Illinois, thereby bringing more of its property and business into the state, without first securing a certificate of convenience and necessity. Neither can it discontinue its railroad operations in Illinois without such a certificate. Under the decided cases in Illinois, even though appellee applied for a certificate of convenience and necessity, it would not be entitled to receive the same as long as any other utility was rendering adequate service in the field it proposed to serve. (See cases cited in brief.) Yet appellant urges the State of Illinois has the right to assume that appellee will, in any ensuing year, bring into the state enough of its property and business to warrant a tax levied according to the scale of minimums of section 107.

Appellant relies mainly on the case of General Railway Signal Co. v. Virginia, 246 U. S. 500, which involved the legality of an "admission" fee, rather than a franchise tax, against which the only contention made was that it unreasonably burdened interstate commerce. The difference has heretofore been pointed out. That such difference exists is evidenced by the language of the Court in the case of Hanover Ins. Co. v. Harding, 272 U. S. 494, heretofore quoted, and in the case of New York v. Latrobe, 279 U. S. 421, wherein the Court said:

> "The tax, denominated a 'license fee,' is paid but once, purports to be imposed on the corporation 'for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state,' and the obligation to pay it is made a prerequisite to obtaining a certificate of authority from the state and to the continuance of business there (People ex rel. D. W. Griffith v. Loughman, 249 N. Y. 369, 164 N. E. 253). But the foreign corporation is permitted to transact business and make valid contracts within the state prior to payment of the tax, which of necessity cannot be computed or paid until after the first year has elapsed. The tax is evidently the complement of the organization fee, computed in like fashion on the authorized capital stock of domestic corporations by Chapter 143 of the Laws of 1886" (Op. 423).

The State of Virginia did not exact any annual franchise or license fees. The admission fee considered by the Court was due at the time the corporation was admitted to, or did business in, the state.

In its opinion the Court stated that the case was "on the border line" (Op. 511).

III.

The tax here involved is, as to appellee, void, inasmuch as the tax and the statute, pursuant to which it is laid, discriminates against appellee and in favor of other corporations, both foreign and domestic, in violation of the Equal Protection Clause.

Sections 105-107 of the General Corporation Act of Illinois, on the face as well as in the present application thereof, act to deprive appellee of the equal protection of the laws. Appellee is discriminated against, as compared to other corporations, both foreign and domestic, who pay franchise taxes on the basis of 5 cents of each $100.00 on that portion of their capital stock represented by property and business in Illinois.

In the consideration of this question we urge that the Court keep in mind that, so far as the State of Illinois is concerned, appellee has never asked that more than $1,533,324.23 of its issued capital stock be admitted. It has never asked the State of Illinois for authority to bring more than that amount of its assets and business represented by that amount of its issued capital into the state. So far as the State of Illinois is concerned, it is quasi Illinois corporation, with an issued capital of that amount, of which $270,420.00 was represented by property and business in the state during the period which is the

basis for the tax here involved. The State of Illinois did not authorize appellee to have an issued capital stock in the amount of $36,294,750.00. We can conceive of no basis reasonably connecting appellee's stock, which has never been admitted to Illinois or used in Illinois, with a franchise tax imposed by the State of Illinois. There is no more connection between such stock and the taxable value of appellee's franchise to do business in Illinois than there is between appellee's authorized stock and the taxable value of its franchise to do business in Illinois. The same reasoning which compelled the Court to hold that the Ohio franchise tax measured in part by the authorized but unissued capital stock of the Air-Way Electric Appliance Company to be void, necessitates a similar holding in this case.

Appellant says that the amount of issued stock bears a fair relation to value of the annual franchise to do business. Assuming this to be so, nevertheless the ratio of property owned and business annually done bears a more true relation to the value of the franchise, and the state discriminates against appellee by taxing some corporations on one basis (the one having a real direct and more true relation to the value of the privilege) and taxing appellee a proportionately greater amount on a more remote, arbitrary and less true basis.

On its face, therefore, the statute is discriminatory, first, because it bases the tax on a large part of appellee's stock which was not and had never been represented in

Illinois; and, secondly, because it fixed two "bases" for a franchise tax, which, when applied, assess taxes in different amounts, acting more favorably towards some corporations and less favorably towards others, including appellee.

We say, to justify this statute, appellee must be in receipt from the State of Illinois of some actual and substantial privilege or advantage which other corporations, foreign and domestic, paying less, or proportionately less, do not receive. No such benefit can be suggested by appellant.

Appellee's right to be a corporation with authority to issue a certain amount of capital stock, to engage in a certain business, and its invested powers, are all granted to it by Missouri, the state of its incorporation.

The sole right which appellee seeks from or receives from the State of Illinois is to enter that state and do a local business.

In its application, as well as on its face, the Illinois statute discriminates against appellee; $270,423.00 of appellee's issued capital stock is represented by property and business in Illinois. On this amount of issued capital stock the ordinary corporation would be required to pay an annual franchise tax of $135.21. A tax of $1,000.00 is claimed by the State of Illinois. A corporation with an issued capital stock of $270,423.00, having all of its property and business in Illinois, would pay only $135.21. A corporation with a total issued capital stock of $1,533,-

324.23 (the largest amount of appellee's issued capital, which, during any year, was represented in Illinois), and with $270,423.00 of that capital represented in Illinois, would pay but $135.21. A corporation, either foreign or domestic, must have had $2,000,000.00 of its issued stock represented in Illinois before its tax would be $1,000.00, under section 105. Such corporations having similar amounts of their capital in Illinois—exercising the same taxable privileges as appellee—would pay only one-seventh of the tax which is demanded of appellee.

In the Air-Way Electric case this Court said:

> "The fee determined by the lower court, as well as that fixed by the state officers, is arbitrary. Without holding that such a charge must be measured by the value of the privilege for which it is imposed, it may be said that some relation to such value is a reasonable requirement" (Op., p. 83).
>
> Air-Way Electric Appliance Co. v. Day, 266 U. S. 71.

The tax is "not limited to the part of the capital stock justly apportioned to the taxing state."

International Shoe Co. v. Shartel, 279 U. S. 4[illegible].

As applied to appelle[illegible]nd weighted by such a test, sections 105-107 of the I[illegible] statute require appellee to pay a franchise tax which has no fair and reasonable relation to the value of the privilege granted, and the tax is

its principal office or place of business without this state, and the location of the proposed principal office or place of business in this state;

(b) The names of the states in which it has qualified to do business under the corporation laws thereof;

(c) The character of business which it intends to carry on in this state;

(d) An itemized estimate of the amount of tangible property to be employed by it in the state during the first year next after the date on which it shall be licensed and begin to do business in this state;

(e) An estimate of the total amount of the capital to be employed by it in this state and an estimate of the total amount of capital to be employed by it elsewhere during such year, itemized as follows:

(1) The value of patent rights, licenses, franchises, trade-marks, secret processes, copyrights and good will.....$.....

(2) Contracts or choses in action.....$.....

(3) Merchandise, raw materials and goods in process of manufacture.....$.....

(4) Book accounts and notes.....$.....

(5) Machinery and real estate.....$.....

(6) Stock in other corporations and securities .....$.....

(7) Furniture, fixtures, stationery and like articles .....$.....

(8) Cash in bank.....$.....

(9) Kinds and amount of other personality (personalty) .....$.....

(f) An estimate of the annual business to be transacted by the corporation everywhere;

(g) An estimate of the annual business to be transacted at or from places of business in Illinois;

(h) The name and address of some person permanently residing in this state, upon whom, as the resident agent of the corporation until his successor shall have been appointed, service of legal process may be had, and the names and addresses of the officers and directors;

(i) Such other information touching the property and business of the corporation as the Secretary of State may require;

In the case of telegraph, telephone, cable, railroad or pipe line corporations, in addition to the itemized estimate of the total amount of capital to be employed in this state, there shall be given the total length of such telephone, telegraph, cable, railroad or pipe line, and the length of the line located in this state and the total value of such line and the value of such line in this state.

Sec. 92. **Revocation of Certificate of Authority to Do Business—Grounds.**—The certificate of authority of a foreign corporation, subject to the provisions of this act, may be revoked by the Secretary of State:

(1) Upon failure of an officer, director or manager, to whom interrogatories are propounded, to answer the same fully and to file such answer in the office of the Secretary of State within thirty days after the mailing of the same;

(2) If such corporation is transacting no business in Illinois and has no tangible property in this state;

(3) If the answer to interrogatories propounded by the

Secretary of State discloses, or if the fact is otherwise ascertained, that the proportion of the capital stock of such corporation represented in this state is greater than the amount theretofore paid upon by such corporation and the deficiency in such fees is not paid within thirty days of the receipt of a notice sent by mail to the president and secretary, or to the statutory agent of such corporation of record in this state, or to the attorney filing the interrogatories for such corporation, or is not paid within such extension of time as may be granted by the Secretary of State;

(4) Upon failure of such corporation to keep on file in the office of the Secretary of State duly authenticated copies of each instrument amending its charter;

(5) Upon failure of such foreign corporation to appoint and maintain an agent in this state upon whom service of legal process may be had;

(6) Upon failure, neglect or refusal to file an annual report as required by this act, or upon failure, neglect or refusal to pay the franchise tax assessed against it on or before the thirty-first day of July of the year in which such franchise tax becomes due and payable;

(7) Upon failure, neglect or refusal to file a certificate of issuance of stock and the payment of the fees required by this act.

As amended by L. 1927, p. 354, approved and in force May 12, 1927.

Sec. 94. **Unlicensed Foreign Corporation Doing Business in State—Actions and Suits by—Penalties—Recovery.**—No foreign corporation doing business in this state without a

license shall be permitted to maintain any suit at law or in equity in any of the courts of this state upon any demand, whether arising out of contract or tort; and all such corporations shall be liable by reason thereof to a penalty therefor of not less than two hundred and fifty dollars nor more than one thousand dollars, to be recovered in any court of competent jurisdiction, in a civil action to be begun and prosecuted by the Attorney-General.

Sec. 96. **Incorporation Fee—Increase of Capital—No-par-value Stock, Basis of Fee—Public Utility Corporations.**—The Secretary of State shall charge and collect an initial fee of one-twentieth of one percentum upon the amount of the capital stock which the corporation, has issued or it proposes to issue at once, but in no case shall such fee be less than twenty dollars, and a like fee of one-twentieth of one percentum upon filing a certificate of any subsequent issue or increase of capital stock and, in addition thereto, the same fee as that required for filing other certificates of amendment. In the event that the corporation has capital stock of no-par value, its shares, for the purpose of fixing the fee, shall be taken and considered at the amount of the consideration received or to be received by such corporation for such shares. Each public utility corporation, including railroads, shall pay to the Secretary of State the same fees as are required to be paid for incorporation by other corporations organized for pecuniary profit.

As amended by L. 1927, p. 354, approved and in force May 12, 1927.

Sec. 101. **Foreign Corporations—Fees for Certificate of Authority—On Increase of Stock—On Extensions, Consolidations, Mergers, Amendments—Basis of Fees—Where**

Capital Stock Without Par Value.—Each foreign corporation for pecuniary profit, other than an insurance company or building and loan company, in addition to the annual franchise fees and taxes hereinafter provided, shall pay to the Secretary of State for its certificate of authority to do business in Illinois, the same fees provided by this act to be paid by a similar corporation incorporated under the laws of this state. Each foreign corporation, heretofore or hereafter admitted to do business in this state, shall also pay for increases in the amount of capital stock represented in Illinois, for extensions of existence, consolidations, mergers and for filing amendments the same fees required to be paid by corporations organized under the laws of this state. All such fees shall be based upon the proportion of its issued capital stock represented by business transacted and property located in Illinois. Whenever it shall appear that the amount of capital stock represented in Illinois is greater than the amount theretofore paid upon by any foreign corporation, such corporation, before it shall continue to transact business in Illinois, shall pay to the Secretary of State upon such excess the same fees that a domestic corporation must pay upon an increase in capital stock equal to the amount of such excess.

If a foreign corporation has a capital stock of no-par value, its shares, for the purpose of estimating the amount of fees and taxes to be paid hereunder, shall be taken and considered at the amount of the consideration received or to be received by such corporation for such shares.

As amended by L. 1927, p. 354, approved and in force May 12, 1927.

Sec. 102. **Annual Reports—What Corporations Required to Make—Time for Making—Contents—Verification—Publication of List of Reporting Corporations—Copy to Recorder of Deeds.**—Each corporation, including railroads, domestic and foreign, other than homestead associations, building and loan association[s], banks, religious corporations, insurance companies, and corporations not for pecuniary profit, shall make a report in writing to the Secretary of State between the first day of February and the first day of March of each year on forms to be prescribed and furnished by the Secretary of State. That part of the annual report relating to property and business shall be made as for the calendar year ending December thirty-first preceding (except in case the corporation keeps its accounts on the basis of a fiscal year not identically with the calendar year it shall make report for the fiscal year next preceding February first of the year in which such report is made. The other information required in such report shall be given as of the date of execution of such report. In case the corporation has not been in existence a year it shall furnish the Secretary of State the information required for the period since it was incorporated or admitted. Such report shall give the address of the corporation, officers and directors in this state by street and number. Such annual report shall also disclose such facts as are necessary to enable the Secretary of State to ascertain the proportion of its capital stock represented by business transacted and tangible property located in this state, and such other information as may be necessary or appropriate in order to assess the annual license fee or franchise tax. Such report shall be verified by the oath of the president, vice-president, secretary, assistant secretary or treasurer of the corporation, but in

case the corporation is in the hands of an assignee, receiver or trustee, then such report shall be signed and verified by such assignee, receiver or trustee.

The Secretary of State shall, on or before the 15th day of January of each year, forward to each corporation of record in his office a copy of the forms to be used in making the report specified in this act, but the failure to send or to receive such forms shall not relieve the corporation from the duty of making such report.

The Secretary of State shall publish on or before September first of each year a list of corporations filing an annual report in accordance with the provisions of this act, with the names and addresses of the president and secretary of domestic corporations or the agent for service of legal process of foreign corporations, and shall furnish a copy thereof to each Recorder of Deeds.

Sec. 105. **Annual License Fee or Franchise Tax—Amount—Minimum—No-Par-Value Stock.**—Each corporation for profit, including railroads, except insurance companies, heretofore or hereafter organized under the laws of this state or admitted to do business in this state, and required by the act to make an annual report, shall pay an annual license fee or franchise tax to the Secretary of State of five cents on each one hundred dollars of the proportion of its issued capital stock, or amount to be issued at once, represented by business transacted and property located in this state, but in no event shall the amount of such license fee or franchise tax be less than that required by this act of corporations having no property or business in this state.

In the event that the corporation has stock of no-par value, its shares, for the purpose of fixing such fee, shall

be taken and considered at the amount of the consideration received or to be received by such corporation for such shares.

As amended, L. 1927, p. 354, approved and in force May 12, 1927.

The 1927 amendment carried an emergency clause, as follows:

Sec. 2. Whereas, the Supreme Court of this state has held that certain sections of the General Corporation Act, which based the fees on the authorized capital stock, are unconstitutional as to foreign corporations;

Whereas, under the decision of the Supreme Court the Secretary of State will not be able to collect the fees from corporations to which the state is entitled and, further, that all of the annual franchise tax provisions of said act are in danger of being invalidated unless said sections are amended, and,

Whereas, the Secretary of State is, under the provisions of section 112 of the aforesaid act, obliged to mail notice between the first day of February and the fifteenth day of May, in writing, to each corporation against which a franchise tax or fee is assessed, notifying such corporation of the amount of franchise tax or fee assessed against it for the year next ensuing, commencing on July first, and,

Whereas, unless this act becomes effective on or before May fifteenth the state will lose the fees from corporations to which the state is justly entitled;

Therefore, an emergency exists and this act shall

take effect and be in full force from and after its passage.

L. 1927, pp. 359-60.

Sec. 106. **Ascertainment of License Fee or Franchise Tax in Case of Corporations Generally.**—In ascertaining the amount of the issued capital stock represented by business transacted and property located in this state, the sum of the business of any foreign or domestic corporation transacted in this state and the total property of such corporation located within this state shall be divided by the sum of the total business of the corporation and the total property of the corporation wherever situated.

As amended by L. 1927, p. 354, approved and in force May 12, 1927.

Sec. 107. ——**Basis in Case of Corporation Without Property in State and Doing No Business in State—Where Stock of No-par Value.**—In case it appears from the annual report that the corporation has no property located in this state, and is transacting no business in this state, the following fees shall be paid annually to the Secretary of State as an annual franchise tax: All such corporations having issued capital stock of $50,000 or less shall pay an annual fee of $10; corporations having issued capital stock of more than $50,000, but not exceeding $200,000, shall pay an annual fee of $15; corporations having issued capital stock of more than $200,000, but not exceeding $500,000, shall pay an annual fee of $20; corporations having issued capital stock of more than $500,000, but not exceeding $1,000,000, shall pay a fee of $50; corporations having issued capital stock of more than $1,000,000, but not exceeding $10,000,000, shall pay a fee of $200; cor-

porations having issued capital stock of more than $10,000,000, but not exceeding $20,000,000, shall pay a fee of $500; and all corporations having issued capital stock in excess of $20,000,000 shall pay an annual fee of $1,000.

In the event that the corporation has stock of no-par value, its shares, for the purpose of fixing such fee, shall be taken and considered at the amount of the consideration received or to be received by such corporation for such shares..

As amended by L. 1927, p. 354, approved and in force May 12, 1927.

Sec. 108. **When Franchise Tax Payable.**—The franchise tax herein provided to be paid shall be due and payable on the first day of July of each year and shall be the franchise tax for the year commencing on the first day of July in which it is due and ending on the thirtieth day of June next thereafter.

Sec. 109. **Assessment of Tax From Annual Report—Corporations Organized Between January 15 and March 1.**—The Secretary of State shall, from the annual report filed, assess a tax at the rates herein prescribed against each corporation required herein to make an annual report.

The Secretary of State shall, from the best available information, also assess such tax on all corporations organized or admitted between the fifteenth day of January and the first day of March.

Sec. 112. **Notice of Amount of Franchise Tax—Contents —Failure to Receive.**—Between the first day of February and the fifteenth day of June, of each year, the Secretary of State shall mail a notice in writing to each corpora-

not limited to that part of appellee's capital justly apportioned to Illinois.

For the foregoing reasons appellee respectfully insists that the decree of the Statutory District Court for the Southern District of Illinois should be affirmed.

Respectfully submitted,

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APPENDIX.

All references are to

Chapter 32, Cahill's Revised Statutes 1927;
Chapter 32, Smith-Hurd Revised Statutes 1927.
Section numbers are identical in both volumes.

Sec. 80. **Certificate of Authority to Do Business—Requirement as to payment of Capital Stock.**—Each foreign corporation organized for pecuniary profit (except banking, insurance, building and loan and surety companies), not now licensed to do business in this state, shall, before it transacts any business or maintains an office in this state, procure a certificate of authority therefor from the Secretary of State. No certificate shall issue to any foreign corporation authorizing it to transact business in this state until the same amount is paid on each share of stock issued or to be issued as is required of like corporations organized under the laws of this state.

As amended by L. 1927, p. 354, approved and in force May 12, 1927.

Sec. 81. **Filing Application With Secretary of State—Contents.**—A foreign corporation desiring a certificate of authority hereunder shall file in the office of the Secretary of State:

(1) A copy of its charter duly authenticated by the proper officer of the state or country where it is incorporated;

(2) A statement verified by its president and secretary or other officer setting forth:

(a) The name of such corporation and the location of

respect to executions issued against property upon judgments of courts of record, and shall be entitled to the same fees for the execution of the warrant, to be collected in the same manner. After proceeding in the manner prescribed, the Sheriff shall make the proper and necessary notations, of the amounts collected, upon the warrant and promptly return it to the Secretary of State within ninety days from the date of issuance thereof, with the amount of franchise tax and penalties collected by him, if any.

Sec. 126. **Corporations Delinquent in Payment of Tax or Failing to File Report—Certifying to Attorney-General—Duty of Attorney-General—Certificate as Evidence—Payment of Fees or Filing of Report Before Institution of Suit.**—On or before the fifteenth day of November of each year the Secretary of State shall certify to the Attorney-General the names of all corporations that have neglected to pay the franchise taxes or have neglected to file the annual report in accordance with the provisions of this act, together with all facts in relation thereto, and it is hereby made the duty of the Attorney-General at the earliest practicable moment, in the name of the People of the State of Illinois, to institute proceedings for the dissolution of such corporation for failure to pay such fees, or for the abandonment and nonuser of charter. The certificate from the Secretary of State to the Attorney-General shall be taken and received in all courts and places as prima facie evidence of the facts therein stated. At any time prior to the institution of suit and upon filing an affidavit that the corporation has been continuously in active business and filing of a report in the form of an annual report required by this act, and upon the payment of all fees, taxes and penalties due, the Secretary of State shall certify to the

Attorney-General of the filing of the report and the payment of the fees, taxes and penalties due.

Sec. 128. **Payment of Franchise Tax and Fees as Condition to Doing Business or Maintaining Suits.**—No corporation required to pay a franchise tax or fee under the laws of this state shall transact any business in this state or maintain any action at law or suit in equity unless such corporation shall have paid such franchise tax, or such fees and penalties when the same become due and payable until such franchise taxes, fees and penalties have been paid in full.

Sec. 129. **Annual Franchise Taxes.**—In addition to all other fees required by law to be paid, the Secretary of State shall collect in advance from corporations subject to a franchise tax, annual franchise taxes as follows:

(1) If a corporation is organized, or admitted to do business in this state, or its capital stock issued or increased;

(a) Between July first of any year (after the year 1919) and September thirtieth of the same year a franchise tax equal to the full amount of the annual franchise tax;

(b) Between October first of any year (after the year 1919) and December thirty-first of the same year a franchise tax equal to three-fourths of the annual franchise tax;

(c) Between January first of any year and the last day of February of the same year, a franchise tax equal to one-half of the annual franchise tax;

(d) Between March first of any year and June thirtieth of the same year, a franchise tax equal to one and one-third of the annual franchise tax.

The franchise tax required by paragraphs "a," "b" and "c" shall be for authority of the corporation to carry on its corporate business until the thirtieth day of June following the date of payment of such tax. The franchise tax required by paragraph "d" of existing corporations increasing their capital stock shall be for authority of the corporation to employ its increased capitalization in this state until the thirtieth day of the second June following, but such corporation shall still be liable to pay its annual franchise tax upon its old capital stock in July following in the same manner as required of other corporations not increasing their capital stock. The fees required in this section shall be based upon the percentum of issued capital stock as evidenced by latest annual report required to be filed under the provisions of this act, if any.

The word "between," as used in this section, shall include both dates specified.

As amended by L. 1927, p. 354, approved and in force May 12, 1927.

Sec. 130. ——**In Addition to Other Licenses or Taxes.** —The annual franchise taxes imposed by this act shall be in addition to any specific licenses or taxes imposed by law upon such corporation for the privilege of carrying on its business, or upon its franchise or property.